

Kim D. Stephens (*pro hac vice forthcoming*)
Jason T. Dennett (*pro hac vice forthcoming*)
Kaleigh N. Powell (*pro hac vice forthcoming*)
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
Telephone: 206.682.5600
Fax: 206.682.2992
kstephens@tousley.com
jdennett@tousley.com
kpowell@tousley.com

Eric H. Gibbs (SBN 178658)
David Berger (SBN 277526)
Alexander Bukac (SBN 305491)
GIBBS LAW GROUP LLP
505 14th Street, Suite 1110
Oakland, California 94612
Telephone: (510) 350-9700
Fax: (510) 350-9701
ehg@classlawgroup.com
dmb@classlawgroup.com
ajb@classlawgroup.com

Counsel for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ALASDAIR TURNER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

APPLE, INC., a California corporation,

Defendant.

No. 5:20-cv-7495

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiff Alasdair Turner (“Plaintiff”) files this Class Action Complaint against

1 Defendant Apple, Inc. (“Apple” or “Defendant”), on behalf of himself and all persons in the
2 United States who owned or leased an Apple iPhone with iOS 13 installed and who used a
3 limited cellular data plan with that iPhone, for Apple’s unlawful and unfair business practices.

4 2. To use their iPhones, consumers are required to use Apple’s mobile operating
5 system—designed and marketed by Apple—known as iOS. In September 2019, Apple released
6 iOS version 13, which Apple promised would bring “improvements across the entire system that
7 make your iPhone even faster and more delightful to use.”¹

8 3. Apple did not disclose that iOS 13 also contained hidden software code (the
9 “Consuming Code”) that caused devices running iOS 13 to consume cellular data without the
10 user’s input or control, and without providing the user any identifiable benefit.

11 4. As discussed in detail below, Apple designed iOS 13 in such a way that when
12 used in the ordinary course, iOS 13 caused the user’s iPhone to surreptitiously transmit cellular
13 data, increasing the user’s overall cellular data consumption without his or her knowledge,
14 without any change in the user’s usual behavior, and without providing the user any identifiable
15 benefit. By increasing cellular data usage, the Consuming Code increases costs to users and uses
16 up the cellular data they have purchased from their cellular providers.

17 5. For iPhone users who pay their cellular provider directly in proportion to the data
18 they use, or for iPhone users who pay for capped data plans (for example, 10 GB of data a
19 month), the Consuming Code causes consumers to be charged for cellular data they did not use,
20 or consumes data for which they otherwise would have been entitled to use under their data
21 plans.

22 6. Soon after Apple released iOS 13, iPhone owners started submitting complaints
23

24 ¹ <https://www.apple.com/ios/ios-13/>

1 and tech support queries related to the Consuming Code. They explained to Apple that their
2 phones were using copious amounts of data without explanation—yet Apple did nothing to fix
3 the problem for months. Finally, in June 2020, Apple released iOS version 13.6—the 14th
4 revision of iOS 13—which stopped the excess cellular data consumption.

5 7. Given Apple’s months-long delay in mitigating the harmful effects of iOS 13, the
6 only reasonable explanation is that the Consuming Code was not a defect. The Consuming Code
7 was designed to measure the performance of a new Apple software product or iOS feature,
8 unbeknownst to and without the input of users—and at their expense.

9 **PARTIES**

10 8. Plaintiff Alasdair Turner is a resident and citizen of the State of Washington.
11 Sometime in September or October 2019, Mr. Turner updated his iPhone to iOS 13. Before he
12 downloaded iOS 13, Mr. Turner did not know, nor could he have known through reasonable
13 diligence, of the Consuming Code.

14 9. Defendant Apple Inc. is a corporation incorporated under the laws of the State of
15 California. It keeps its principal place of business in Cupertino, California.

16 **JURISDICTION AND VENUE**

17 10. This Court has original jurisdiction over this action under the Class Action
18 Fairness Act of 2005, 28 U.S.C. § 1332(d)(2). This is a class action in which the amount in
19 controversy exceeds the sum of \$5,000,000, and Apple is a citizen of a State different from that
20 of at least one Class member.

21 11. Venue is proper in this District under 28 U.S.C. § 1391(a) through (d) because
22 Apple’s principal place of business is located in this District and substantial parts of the events or
23 omissions giving rise to the claims occurred in the District.

INTRADISTRICT ASSIGNMENT

12. Under Local Rule 3-2(c) and (e) assignment of this action to the San Jose Division is proper because Defendant Apple, Inc. is headquartered in Santa Clara County, and a substantial part of the events or omissions which give rise to the claims alleged herein occurred there.

FACTS

A. Apple's iOS is an essential—and non-negotiable—component of using an iPhone.

13. Since it was first released in 2007, the Apple iPhone has become a ubiquitous piece of technology. Apple sold approximately 185 million iPhones in 2019 alone.² By May 2020, over 52% of the smartphones used in the United States were iPhones, giving Apple a greater market share than all other phone manufacturers combined.³

14. Apple bundles the iPhone with its proprietary mobile operating system: iOS. iPhone owners are required to use iOS on their iPhones—they have no commercial options for operating their iPhones other than iOS. Over the last eight years (starting with iOS 6), Apple has announced a new iOS version each June and released it to the public each September, with periodic updates issued throughout the year.

15. One of the reasons that Apple updates iOS periodically is to add security improvements called “patches.” If users choose not to install the most recent iOS version, their iPhones may be vulnerable to outside attack. Apple itself encourages its users to download the latest iOS updates for this reason. For example, after Wikileaks published documents in 2017

² <https://www.usatoday.com/story/tech/2019/12/31/iphone-sales-dip-but-still-no-1-2019-airpods-and-watch-rise/2775193001/>

1 allegedly showing that the U.S. government was trying to exploit vulnerabilities in Apple's iOS
2 to hack into iPhones, an Apple spokesperson said:

3 Our products and software are designed to quickly get security updates
4 into the hands of our customers, with nearly 80 percent of users
5 running the latest version of our operating system. While our initial
6 analysis indicates that many of the issues leaked today were already
7 patched in the latest iOS, we will continue work to rapidly address any
8 identified vulnerabilities. We always urge customers to download the
9 latest iOS to make sure they have the most recent security updates.⁴

10 16. Given Apple's representations, users acted reasonably by accepting and installing
11 Apple's iOS updates.

12 **B. Consumers pay cellular providers, not Apple, for their cellular data.**

13 17. Though Apple is responsible for the hardware and operating system software on
14 its iPhones, it does not provide iPhone users with the data plans needed to use those iPhones.
15 That is, while Apple acknowledges that "[a] Wi-Fi or cellular data connection is required for
16 some features of the Apple Software and Services,"⁵ it does not provide that Wi-Fi or cellular
17 data connection itself. Instead, consumers must turn to cellular and data providers like AT&T,
18 T-Mobile, Verizon, and Sprint, among others.

19 18. Consumers pay those cellular providers directly, both for calling plans and for the
20 cellular data they need to access the internet without a Wi-Fi connection. Most providers offer
21 cellular data as part of a "plan": consumers pay monthly for a plan that entitles them to use a
22 particular amount of cellular data per month. Consumers who exceed their monthly cellular data
23 allotment are charged overage fees, which often are exorbitant.

24 ³ <https://www.statista.com/statistics/266572/market-share-held-by-smartphone-platforms-in-the-united-states/>

⁴ <https://techcrunch.com/2017/03/07/apple-says-most-vulnerabilities-in-wikileaks-docs-are-already-patched/>

19. For all consumers, then, and particularly for those who pay for capped data plans, the amount of data their phones consume each month is important to the use and functioning of their cell phone, in addition to the amount they pay their cellular provider for the data that they receive.

C. iOS 13's Consuming Code eats through consumers' data—without explanation—and deceptively attributes that data use to "Uninstalled Apps."

20. Within weeks of Apple releasing iOS 13, consumers started noticing that their iPhones were consuming data inexplicably. Despite having relatively consistent levels of cellular data use before iOS 13, their iPhones began using significantly higher amounts of data after they installed iOS 13.

21. Users want to monitor their valuable cellular data usage and avoid overage charges, throttling, and de-prioritization. For users who pay for capped data plans, such data usage tracking is essential. Apple is aware of this and, therefore, provides users with a cellular data meter on their iPhones: consumers can go into their iPhone's *Settings > Cellular > Cellular Data* menu to find out how much cellular data their iPhone has consumed in a particular period, categorized by the application or iOS feature that consumed the data. To track their data usage over a particular time period, users can manually reset their cellular data meter to zero.

22. One of the categories that an iPhone's cellular data meter tracks is "Uninstalled Apps." Before Apple implemented the Consuming Code, Uninstalled Apps accounted exclusively for mobile data from apps that the user had uninstalled (and so the source of the data consumption was no longer identified in the list of apps on the cellular data meter). Because apps in this category have been uninstalled, the category should not increase except at the moment

⁵ Software License Agreement 2(h), https://www.apple.com/legal/sla/docs/iOS13_iPadOS13.pdf

when a user uninstalls an app, and then only by the amount of data used by that uninstalled app. The Uninstalled Apps category, therefore, recorded a very limited set of data use: the amount of data used by applications that the user deleted since the last time the cellular data meter was reset to zero.

23. After installing iOS 13, users who checked their cellular data meters discovered kilobytes, megabytes, or in some cases gigabytes⁶ of cellular data consumption attributed to Uninstalled Apps. Strangely, the amount of data supposedly used by uninstalled apps continued to increase even when users did not uninstall any new apps.

24. This Apple-consumed cellular data use showed up on user's cellular provider bills. Users on fixed data plans received notices that they had reached their data limits and were charged for additional data over that limit.

25. Unsurprisingly, many consumers took to the internet to share their problem and to see if anyone had a solution:

- "I have been having this issue as well and have been working with Apple for three weeks now. My phone has blown through 19 gig [sic] of data of which 70% has been uninstalled apps, with the phone being replaced, and nothing being installed or uninstalled on the phone. This has been going on the past three weeks with no resolution."⁷ (Nov. 14, 2019)
- "Mine also shows 9.3MB of cellular data used from 'uninstalled apps' so far this month and my cycle is over at the end of the 11th. It's been showing a few MB's every month now and I reset my counter at the end of each billing cycle. I haven't deleted any apps in a few months. I'm on 13.3 iPhone 7. Probably just a bug not high on their radar if at all on their radar."⁸ (Jan. 8, 2020)
- "I have the same problem since iOS 13.1 (official). Right now on 13.3 it's

⁶ One megabyte (MB) is one thousand twenty four kilobytes (KB). One gigabyte (GB) is one thousand twenty four megabytes. 100MB is equivalent to 40 pages of web surfing or an hour on Google Maps. 1GB is equivalent to streaming a one hour video on Netflix.

⁷ <https://discussions.apple.com/thread/250660254?answerId=251283502022#251283502022>

⁸ <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/>

pretty bad: about 119 MB in a month.”⁹ (Jan. 28, 2020)

- “Out of the 900MB I used, 360MB came from System Services and Uninstalled Apps. Sometimes it’s a lot more.”¹⁰ (Jan. 28, 2020)
- “I’ve been working with Apple support since beginning of December! My case has been ‘escalated’ in priority to engineers several times. Guess what...huge surprise....no answers/solutions. The latest I heard was ‘in cases like these, usually you just have to wait for the next update.’ This was right before I updated to 13.3.1. Another big shock....that did NOT fix the issue. I’m not leaking as much data as I previously was in uninstalled apps, however, it is still going up.....with nothing installed, uninstalled, etc!”¹¹ (Feb. 4, 2020)
- “Today, I turned my cellular data on for about 10 minutes. In that time, uninstalled apps used over 20MBs, shooting up to 80 MBs. What is going on here?”¹² (Feb. 5, 2020)

26. To demonstrate the problem on their iPhones, many users began resetting their cellular data meters and then reporting the subsequent data consumption reported in the Uninstalled Apps category—even though they had not uninstalled any applications:

- “I just, Reset Statistics . . . I did not delete any apps after selecting ‘reset.’ Question: Why does my data usage for uninstalled apps keep climbing. [sic] It’s gone up 5 MBs in about 20 minutes.”¹³ (Aug. 31, 2019)
- “Hello, I noticed I have uninstalled data usage under cellular usage. I’ve read that it’s the data that the apps I deleted used, and that it should be cleared if I were to reset the statistics. However, I reset my statistics, and I hadn’t deleted any apps after that until now. However, again, the uninstalled apps are showing on my data usage with like 90mb. Why is this happening?”¹⁴ (Sept. 23, 2019)
- “It is happening with my iPhone 8 too. This category consumed 1.1 Gb in the last 2 days. I reset my counter and hadn’t uninstalled anything after. I

⁹ <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/>

¹⁰ <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/page-2>

¹¹ <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=3>

¹² <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/page-2>

¹³ <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/>

¹⁴ <https://discussions.apple.com/thread/250660254>

have a support case open. No resolution yet.”¹⁵ (Sept. 26, 2019)

- “I noticed this issue as well. For example, I can do a ‘Reset Statistics’ for Cellular data before going to bed, not touch my phone at all the entire night, and the following morning there will be a few Kb’s worth of data next to ‘Uninstalled Apps’. It wouldn’t be so annoying if we just knew what it was.”¹⁶ (Jan. 28, 2020)
- “So this is what happened : After 2-3 minutes my phone became hot. I checked iOS setting/cellular and saw an uninstalled app used 700-800MB. I closed the settings and reopened it and it was 900MB. The uninstalled app used 1.2GB data in less than 5-6 minutes. I immediately restarted my iPhone and after that it used another 200-300MB and then stopped downloading or uploading. . . . UPDATE : I reset my cellular statistics many times since yesterday and didn’t install or uninstall anything but ‘Uninstalled App’ is still transferring data. (About 350KB today.) I contacted Apple Support again and asked for an explanation because this is really weird and I’m worried about my privacy and personal data.”¹⁷
- “Same problem here on iOS 13.3. In an attempt to remove other factors I did the following [sic]:
 - Turned off the phone and restarted it.
 - Reset the data statistics.
 - Used the phone, but did not uninstall any apps.
 And, yet, the line for ‘Uninstalled Apps’ in the mobile data section in settings shows a few KB of data usage; slowly going up. I find this a bit unsettling but haven tried a complete factory reset yet.”¹⁸
- “Checked my Data usage and saw 435kb for Uninstalled Apps. I haven’t uninstalled any apps in weeks let alone today. This section was zero when I went to sleep, and my phone only uses Cellular while I am at work. So as you can bet I’m very confused as to how this has happened. . . . **Update:** the size has grown to 484kb and I still haven’t deleted any apps. **Update 2:** it has gone up another 12kb. It’s not a lot but I really want to know what is using this data? It’s not u stalled [sic] apps as I haven’t uninstalled any apps since I reset the statistics yesterday morning. . . . **Update Day 3:** It is now at 866kb. I still haven’t deleted any apps. How is this getting larger?”¹⁹

¹⁵ <https://discussions.apple.com/thread/250660254?answerId=250660254021#250660254021>

¹⁶ <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/>

¹⁷ https://www.reddit.com/r/applehelp/comments/deg253/uninstalled_app_used_12gb_data/

¹⁸ https://www.reddit.com/r/ios/comments/d7njbf/ios_13_uninstalled_apps_using_data_even_after_fcy5f7x/

¹⁹ https://www.reddit.com/r/ATT/comments/e584ra/iphone_uninstalled_apps_using_data/

- “Has anyone noticed that ‘uninstalled apps’ are constantly using mobile data? I haven’t uninstalled any apps in weeks and have reset my network data statistics many times since then, and uninstalled apps are somehow constantly increasing in mobile data used? I can reset the network stats and see uninstalled apps have used data within 5 minutes?! I’m at a huge loss as to why this is. Within an hour of resetting the statistics it has managed to use over 600kb of data?! Running iOS 13.2.2.”²⁰
- “The uninstalled app section in cellular is using data up to few kb even though they are uninstalled. I reset the history of cellular usage and it still starts using it up. Anyone know why?”²¹
- “I have the same problem. Yesterday I totally nuked my phone and installed everything fresh – not even a restore from backup. And within minutes I was getting cellular data usage from an ‘uninstalled app.’ I’m already at 1gig [sic] in just 20 hours.”²² (Jan. 6, 2020)
- “Over the last month, my updates from Apple Support was...drum roll...No update available yet from the Apple Engineering team. My newest email update was to install 13.3.1 (which I did Feb 2nd) and reset my Cellular Data usage. Currently sitting at 308KB in under 48 hours. A huge difference from my 4GBs in 72 hours in December, but still creeping up.”²³ (Feb. 4, 2020)

27. The issue is more than just annoying for many users—it has significant impacts on their cellular data usage and related cellular plans:

- “This issue is totally leaching data from my data plan. I have 3 GB per month, and 500MB I lost within one day only due to this issue. For my personal use was used [sic] only 40 MB.”²⁴ (Oct. 14, 2019)
- “Because of the ridiculously high cost of cell service in Canada, for the last 10 years I’ve used a prepaid service with a low data cap (100 MB per month). I almost never exceed that cap, until I installed iOS 13. After a couple of weeks I got the 90% data usage advisory from the carrier. In looking at the usage, in addition to the usual apps usage, at the top of the list

²⁰ https://www.reddit.com/r/ios/comments/dw8979/uninstalled_apps_using_network_data/

²¹ https://www.reddit.com/r/ios/comments/d7njbf/ios_13_uninstalled_apps_using_data_even_after/

²² <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=3>

²³ <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=3>

²⁴ <https://discussions.apple.com/thread/250660254?answerId=251283502022#251283502022>

Uninstalled Apps data was over 50 MB. . . . Now I was being billed for over usage by the carrier.”²⁵ (Oct. 5, 2019)

- “I reset yesterday to coincide with my Verizon billing period. Total use is 4.3 MB and uninstalled apps is 197 KB. I know they are not large amounts but I do not have unlimited plan and IT SHOULD BE ZERO.”²⁶ (Nov. 14, 2019)
- “13.2.2 is definitely not a universal fix. I’m running this version and this month I’m up to 21mb. Without having uninstalled anything in months. This is about 5% of my total data usage. Seems small but if you are on a limited plan, every little bit counts.”²⁷ (Nov. 16, 2019)
- “I am having the same issue on all three iPhones in my family – both personal and work phones. I have upgraded to 13.2.3. On my work phone, uninstalled apps went through 1.6 GB data in less than one day where I had a wifi connection. I had to turn off cellular data on my personal phones as I was running out of data.”²⁸ (Dec. 4, 2019)
- “3 x family iPhones – 6s, 7 & 8. All on 13.2.3 My wife and daughter have both used there [sic] 5gb allowance this month. Which is unprecedented. If I switch off wifi and reset statistics, then I see around 500kb of Uninstalled Apps data usage in 10 minutes. This is killing both our data plans and battery life.”²⁹ (Dec. 6, 2019)
- “I have virgin 10GB plan. I’ve never even come close to using that until last month when I exceeded it. 80% on uninstalled apps! Apple is clueless and not helpful at all. Been into store and on phone with support number of times all with no solution. I’ve tried everything they suggested to no avail. Finally upgraded from my 8 to new iPhone 11. Thought I had solved my problem by getting new phone....was sadly wrong....still blowing thru data in uninstalled apps....up to 210 MB today alone which is over 1/2 my total usage. This is a brand new phone....nothing ever uninstalled!”³⁰ (Dec. 15, 2019)
- “Me and my wife are also having this problem. A week ago my wife lost

²⁵ https://discussions.apple.com/thread/250698474?fbclid=IwAR3YJSRSDiti_NbjEIfVO0WV_S6l2XCeOFgMIPo-xJzX3LPgWPpJ7VN6ABaE

²⁶ <https://discussions.apple.com/thread/250660254?answerId=251283502022#251283502022>

²⁷ <https://discussions.apple.com/thread/250660254?answerId=251283502022#251283502022>

²⁸ <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=2>

²⁹ <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=2>

³⁰ <https://discussions.apple.com/thread/250660254?answerId=251283502022&page=2>

over a gigabyte in a day to uninstalled apps and triggered her data limit warning – which was how we noticed. [I] thought mine has settled down and was ok now, so I put mobile data on again. Just noticed though that it has used over 200 mb today.”³¹ (Dec. 25, 2019)

- “I just noticed this issue on my iPhone XR. I got a notification from my carrier that I’ve used 90% of my 8GB of data and I have 11 days left in my billing cycle. My data usage is usually around 4GB per month, so this was pretty strange. I noticed that System Services and Uninstalled apps we’re [sic] taking up the majority of my data usage. I Reset my statistics and am keeping a close eye on this now. This seems to have started around the time I installed iOS 13.3.”³² (Jan. 28, 2020)
- “One thing I find very odd though, when I look at my data usage on my carrier website, when I actually use data it’s always an odd number, like 7.3115 MB. When this data glitch is in action, it’s a perfectly round number. 80.0000MB. 180.0000 MB. I have an 8GB data plan, which is plenty for my regular usage. But with this glitch, I have to turn my cellular data off when I’m on wifi to avoid going over my 8GB. And yes, it’s using cellular data even when I’m on wifi, and yes, I have wifi assist turned off.”³³
- “I’m at 2GBs and so is my wife’s phone. It’s crazy and frustrating. Had to change cell plans bc [sic] Apple was so worthless at helping. Would love if someone had a solution.”³⁴

28. Mr. Turner’s experience has been similar to the reports above. Mr. Turner has a 5GB monthly plan with cellular data provider Verizon. Although 5GB previously had been sufficient for his needs, after installing iOS 13, he exceeded his 5GB cellular data limit. For example, in February 2020, Verizon charged Mr. Turner for one additional GB at \$15 per GB because he exceeded his 5GB plan by .25GB as a result of the increased cellular data usage caused by the Consuming Code.

³¹ https://discussions.apple.com/thread/250698474?fbclid=IwAR3YJSRSDiti_NbjEIfVO0WVS6l2XCeOfgMlPo-xJzX3LPgWpPj7VN6ABaE

³² <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/page-2>

³³ <https://forums.macrumors.com/threads/uninstalled-apps-using-cellular-data.2195879/page-2>

³⁴ https://www.reddit.com/r/ios/comments/e3hxgc/uninstalled_apps_using_cellular_data/f9cyp34/

1 29. On March 18, Mr. Turner reset his iPhone's cellular data meter. He did not
2 uninstall any applications after that date. By March 21, his iPhone was showing cellular data
3 usage under Uninstalled Apps.

4 30. Like many users, Mr. Turner has been unable to stop his iPhone's excess cellular
5 data consumption. While iPhone typically routes data over a free Wi-Fi connection when
6 available, the Consuming Code used the cellular network and consumed cellular data even when
7 Mr. Turner's phone was connected to Wi-Fi. The only way Mr. Turner has been able to prevent
8 the Consuming Code from wasting his cellular data is by turning cellular data off completely.
9 But doing so severely limits the functionality of his iPhone.

10 31. Mr. Turner's iPhone continued to consume cellular data recorded as Uninstalled
11 Apps until July 2020.

12 32. Mr. Turner, like all putative class members, paid for the cellular data that the
13 Consuming Code used.

14 33. The cellular data that Apple appropriated for its own use had value to Mr. Turner
15 and the putative class members.

16 **D. Apple is responsible for the Consuming Codes' consumption of customers' data.**

17 34. Mr. Turner and other users could not have known what Apple knew: that the
18 iOS 13 Consuming Code caused their devices to surreptitiously consume significant amounts of
19 cellular data and categorize the consumption as coming from "Uninstalled Apps," even though
20 the user did not cause the data consumption—either directly or by uninstalling an application.

21 35. The Consuming Code is software introduced by Apple and Apple alone. It cannot
22 simply be explained away as malware: software designed and introduced to iPhones by third
23 parties looking to consume iPhone users' data. Apple is renowned for its security and for
24

1 maintaining tight controls over its iOS and App Store.³⁵ Pulse Secure—a mobile security
2 company—published study results showing that 97 percent of mobile malware was developed
3 for Apple’s leading competitor, Android. Moreover, even one of these rare iOS malware
4 developers would not be able to alter the types of data categorized as Uninstalled Apps, a
5 function controlled by iOS itself.

6 36. It is also highly unlikely that the Consuming Code was an unintended defect in
7 Apple’s software that Apple could not have solved before consuming vast amounts of users’
8 valuable cellular data. One user who tested a beta (early) version of iOS 13 reported noticing the
9 Consuming Code before the iOS was released to the broader public.³⁶ Though he reported the
10 “bug” to Apple—as did “more than ten” others, according to Apple—Apple still released iOS 13
11 with the Consuming Code and failed to warn its users about the problem.

12 37. Apple began officially pushing iOS 13 on iPhones in late 2019, and it has
13 received a deluge of complaints about the Consuming Code since then. But while Apple released
14 more than a dozen major updates to iOS 13 since its initial launch, the Consuming Code was not
15 stopped until July 2020, and continued to eat up consumer data throughout the period. Despite
16 many inquiries, Apple has refused to comment on the issue.

17 38. Forbes ran an article on March 17, 2020 highlighting the issue. Late in March, the
18 author provided an update: “after weeks of pressing for a response, Apple has now told me that
19 its official position is that it declines to comment on this problem. A wholly unsatisfying
20 situation for the many affected users who deserve to understand what is going on with their
21

22 ³⁵ See Vanja Svajcer, *Sophos Mobile Security Threat Report* (2014), available at
[https://www.sophos.com/en-us/medialibrary/PDFs/other/sophos-mobile-security-threat-](https://www.sophos.com/en-us/medialibrary/PDFs/other/sophos-mobile-security-threat-report.pdf)
23 [report.pdf](https://www.sophos.com/en-us/medialibrary/PDFs/other/sophos-mobile-security-threat-report.pdf)

24 ³⁶ [https://www.reddit.com/r/ios/comments/d7njbf/ios_13_uninstalled_apps_using_data_even](https://www.reddit.com/r/ios/comments/d7njbf/ios_13_uninstalled_apps_using_data_even_after/f3uv2j9/)
[after/f3uv2j9/](https://www.reddit.com/r/ios/comments/d7njbf/ios_13_uninstalled_apps_using_data_even_after/f3uv2j9/)

1 iPhones.”³⁷

2 39. Apple’s silence exposes the truth: that the Consuming Code was intentionally
3 introduced and maintained by Apple itself for its own undisclosed purposes and its own benefit.
4 Apple also deliberately withheld from users the ability to control the costs associated with
5 whatever undisclosed functions the Consuming Code performed. An iPhone’s cellular data meter
6 lists dozens of iOS features that are integrated within iOS and tracks the data that each uses.
7 Apple has the ability to correctly identify and account for all mobile data usage by its numerous
8 operating system features. Instead, Apple tried to hide the massive data usage caused by the
9 Consuming Code by miscategorizing it in a way that many users would not discern. In other
10 words, Apple knew what it was doing, and it tried to keep users from discovering the amount of
11 money Apple was costing them.

12 40. By failing to identify the feature provided by the “Consuming Code,” Apple
13 deliberately withheld from users the ability to control the costs associated with whatever
14 undisclosed function the Consuming Code performed. Apple’s opt-in performance monitoring
15 and bug tracking features, its Software Update features, and many video streaming services all
16 either limit their usage to Wi-Fi only by default, or they allow the user to explicitly choose to let
17 the feature use mobile data. So even if the Consuming Code was necessary for some unstated
18 purpose, Apple deliberately chose to consume users’ mobile data rather than limit (or allow users
19 to limit) the Consuming Code to using Wi-Fi when it was connected, which would have avoided
20 or at least reduced the harm to Mr. Turner and the putative class.

21 41. Apple failed to disclose the Consuming Code to those who installed iOS 13 on
22 their iPhones, and that failure to disclose the Consuming Code was and is material. That is,

23 _____
24 ³⁷ <https://www.forbes.com/sites/gordonkelly/2020/03/14/apple-ios-13-iphone-cellular-data-problem-iphone-11-pro-max-u-iphone-xs-max-xr-update/#67bbb5c6485e>

Apple's omission was likely to deceive reasonable consumers into believing that their iPhones' data consumption would be commensurate with their actual use of their iPhones.

42. iPhone users who downloaded iOS 13 were required to agree to Apple's iOS Software License Agreement. Apple uses a separate Software License Agreement for each version of iOS. The Software License Agreement for iOS 13 (like those before and after it), provides that California law governs the agreements:

Controlling Law and Severability. This License will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If you are a consumer based in the United Kingdom, this License will be governed by the laws of the jurisdiction of your residence. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this License shall continue in full force and effect.³⁸

43. Apple elected to have California law govern all claims and disputes concerning the common software required to operate its iPhones. Accordingly, the application of California law to the class members' claims is fair, appropriate, and an election affirmatively made by Apple in its Software License Agreement.

CLASS ALLEGATIONS

44. Under Federal Rule of Civil Procedure 23(b)(2) and (b)(3), Plaintiff brings this action as a class action on behalf of the Class of persons defined as:

All purchasers, owners, users, or lessees of any Apple iPhone who installed - any version of iOS 13 on their Apple iPhone(s) prior to Version 13.6, and who used a limited cellular data plan with that iPhone while iOS 13 was installed.

45. Excluded from the Class are Defendant and any entities in which it has a controlling interest, Defendant's agents and employees, the Judge to whom this action is

³⁸ Available at https://www.apple.com/legal/sla/docs/iOS13_iPadOS13.pdf

1 assigned, and any member of the Judge's staff and immediate family.

2 46. **Numerosity.** The Classes are so numerous that joinder of all members is
3 impracticable. Plaintiff is informed and believes, based on publicly-available information, that
4 there are millions of class members, making joinder impracticable. Those individuals' identities
5 are available through Apple's records, and class members may be notified of the pendency of
6 this action by recognized, Court-approved notice methods. Moreover, the disposition of the
7 claims of the Classes in a single action will provide substantial benefits to all parties and the
8 Court.

9 47. **Commonality.** Plaintiff and the Class share a number of common questions of
10 law and fact, including—but not limited to—the following:

- 11 a. Whether Apple designed and updated iOS 13 with the Consuming Code;
- 12 b. Whether Apple designed, created, advertised, and marketed iOS 13 and
13 subsequent updates to iOS 13 knowing that it contained the Consuming Code,
14 and whether it withheld that information from consumers;
- 15 c. Whether Plaintiff and members of the Class were subject to charges for
16 cellular data as a result of the Consuming Code, and whether their cellular
17 data was appropriated without their knowledge as a result of the Consuming
18 Code;
- 19 d. Whether Apple is subject to liability for concealing material facts from
20 Plaintiff and the Class;
- 21 e. Whether Apple is liable for violating the California Consumer Legal
22 Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750 *et seq.*;
- 23 f. Whether Apple is liable for violating the California Unfair Competition Law

(“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*;

g. Whether Apple is liable for violating the California Computer Data Access

and Fraud Act (“CDAFA”), Cal. Penal Code § 502(c);

h. Whether Apple is liable for Trespass to Chattels.

i. Whether Plaintiff and the Class are entitled to punitive damages; and

j. Whether other, additional relief is appropriate, and the nature of such relief.

48. **Typicality.** Plaintiff’s claims are typical of the claims of the Class. Plaintiff’s claims, like the claims of the Class, arise out of the same common course of conduct by Apple. Specifically, as a person whose iPhone consumed data that Plaintiff personally did not or could not use as a result of the Consuming Code, Plaintiff asserts claims that are typical of each Class member who experience the same Consuming Code.

49. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained competent and capable attorneys who are experienced trial lawyers with significant experience in complex and class action litigation, including consumer class actions. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel has interests that are contrary to or that conflict with those of the proposed Class.

50. **Predominance Under Fed. R. Civ. P. 23(b)(3).** Apple has engaged in a common course of conduct toward Plaintiff and the Class. The common issues arising from this conduct that affect Plaintiff and the Class predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

51. **Superiority Under Fed. R. Civ. P. 23(b)(3).** A class action is the superior method for the fair and efficient adjudication of this controversy. Class-wide relief is essential to

1 compel Apple to comply with applicable law. The interest of individual Class members in
2 individually controlling the prosecution of separate claims against Apple is small because the
3 damages in any individual action are small. Class treatment is superior to multiple individual
4 suits or piecemeal litigation because it conserves judicial resources, promotes consistency and
5 efficiency of adjudication, provides a forum for small claimants, and deters illegal activities.
6 There will be no significant difficulty in the management of this case as a class action.

7 **52. Appropriateness of Final Injunctive Relief Under Fed. R. Civ. P. 23(b)(2).**

8 The prosecution of separate actions by individual class members would create a risk of
9 inconsistent or varying adjudications with respect to individual class members that would
10 establish incompatible standards of conduct for Apple. Such individual actions would create a
11 risk of adjudications that would be dispositive of the interests of other class members and impair
12 their interests. Apple has acted and/or refused to act on grounds generally applicable to the Class,
13 making final injunctive relief or corresponding declaratory relief appropriate.

14 **53.** Injunctive relief is particularly necessary in this case because: (1) Plaintiff and the
15 Class desire to use an iOS on their devices with the same qualities and attributes as Apple
16 advertised iOS 13 to have; (2) if Apple actually produced a new iOS with the qualities and
17 attributes as deceptively represented, Plaintiff and the Class would use that iOS; (3) but Plaintiffs
18 do not have the ability to determine whether Apple's representations are true concerning a future
19 iOS versions they may use. Indeed, Plaintiff, and putative Class members, will likely want to use
20 future versions of Apple's iOS; however, they expect that without injunctive relief, Apple will
21 conceal defects in that iOS (or subsequently-released iOS).

CLAIMS FOR RELIEF

First Claim for Relief
Violations of the Consumers Legal Remedies Act
Cal. Civ. Code §§ 1750 *et seq.*
On Behalf of Plaintiff and the Class

54. Plaintiff individually and on behalf of the Class realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

55. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”), is a comprehensive statutory scheme liberally construed to protect consumers against unfair and deceptive business practices in connection with the conduct of businesses providing goods, property, or services to consumers primarily for personal, family, or household use.

56. Apple is a “person” under California Civil Code § 1761(c) and it has provided “goods” and “services” as defined by Civil Code §§ 1761(a)-(b).

57. Plaintiff and the Class members are “consumers” as defined by Civil Code § 1761(d) and they and Apple have engaged in a “transaction” as defined by Civil Code § 1761(e).

58. As alleged herein, Apple made numerous representations and omissions concerning the manner in which iPhones consumed data and the effects of the Consuming Code.

59. Apple’s acts and practices, representations and omissions, were intended to and did result in the sale of goods and services to Plaintiff and the Class members in violation of Civil Code § 1770. Apple’s CLRA violations include that it:

- a. Represented that its goods have characteristics that they do not have; and
- b. Represented that its goods are of a particular standard, quality, or grade when they were not.

60. As alleged herein, Apple distributed, marketed, and advertised its goods and services to Class member while misrepresenting and concealing material facts about those goods and services. Apple's misrepresentations and omissions were material because they were likely to deceive reasonable consumers into believing that their iPhones' cellular data consumption would be commensurate with their actual use of their iPhones.

61. As a direct and proximate cause of Apple's violations of the CLRA, Plaintiff and the Class have suffered injury in fact, including monetary damages, including that Plaintiff's and the Class members' iPhones consumed valuable cellular data that Plaintiff and the Class did not or could not authorize or use themselves, but for which they otherwise paid and that Plaintiff and the Class members purchased and paid for goods and services that they otherwise would not have, or in the alternative, would have paid less for.

62. This claim seeks only injunctive relief at this time. Plaintiff, however, is sending a demand letter to Apple via certified mail pursuant to the requirements of the CLRA, providing the notice required by Cal. Civ. Code § 1782(a). If Apple does not correct or otherwise rectify the harm alleged by Plaintiff in his letter or this Complaint within the statutorily required thirty-day period, Plaintiff will amend this Complaint to seek monetary damages against Apple pursuant to Cal. Civ. Code §§ 1781 and 1782.

63. Plaintiff seeks an order awarding costs of court and attorneys' fees under Cal. Civ. Code § 1780(e)

Second Claim for Relief
Violations of the California Unfair Competition Law
Cal. Bus. & Prof. Code §§ 17200 *et seq.*
On Behalf of Plaintiff and the Class

64. Plaintiff individually and on behalf of the Class realleges and incorporates by

1 reference each and every allegation set forth in the preceding paragraphs.

2 65. Apple is a “person” under Cal. Bus. & Prof. Code § 17201.

3 66. Apple violated the California Unfair Competition Law (“UCL”) Cal. Bus. & Prof.
4 Code §§ 17200 *et seq.*, by engaging in unlawful, unfair, and deceptive business acts and
5 practices.

6 67. Apple has engaged in “unlawful” business practices by violating multiple laws,
7 including the CLRA and the California Computer Data Access and Fraud Act, as set forth below.

8 68. Apple has engaged in “unfair” business practices by knowingly designing,
9 developing, releasing, and advertising iOS 13 with a significant Consuming Code that could
10 consume Plaintiff’s and the Class members’ cellular data without their input, all while knowing
11 that its iOS is required to operate its iPhone devices.

12 69. Apple has engaged in deceptive business acts and practices by failing to disclose to
13 Plaintiff and the Class that its iOS contained the Consuming Code, so that Plaintiff and members
14 of the Class were unable to make informed choices about whether to install the iOS on their
15 iPhones or alter their cellular data plans to account for the increased cellular data usage caused
16 by the Consuming Code.

17 70. Apple’s omissions—all of which emanated from California—were material
18 because they were likely to (and did) deceive reasonable consumers.

19 71. Plaintiff and the Class are entitled to and seek all available monetary and non-
20 monetary relief for Apple’s UCL violations, including restitutionary damages and an order
21 enjoining Apple’s unlawful acts and practices, plus attorneys’ fees and costs.

Third Claim for Relief
Violations of the California Computer Data Access and Fraud Act
Cal. Penal Code §§ 502 *et seq.*
On Behalf of Plaintiff and the Class

72. Plaintiff individually and on behalf of the Class realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

73. By pushing iOS 13 to unsuspecting consumers, Apple violated the California Computer Data Access and Fraud Act (“CDAFA”).

74. Apple knowingly accessed Plaintiff’s and the Class members’ iPhones and altered, damaged, deleted, or destroyed data, computer software, or computer systems on their iPhones.

75. Moreover, Apple knowingly disrupted or caused the disruption of cellular data usage on Plaintiff’s and the Class members’ iPhones.

76. When Plaintiff and members of the Class updated their iPhones to iOS 13, they did not know—nor could they, through the exercise of reasonable diligence, have known—that iOS 13 contained the Consuming Code.

77. Because Plaintiff and members of the Class did not know that iOS 13 contained the Consuming Code, they did not consent to Apple adding, altering, damaging, deleting, or destroying the operating system on their iPhones such that their iPhones would consume cellular data in a manner untethered to their actual use of their iPhones.

78. Because Plaintiff and members of the Class did not know that iOS 13 contained the Consuming Code, they did not consent to Apple disrupting or causing the disruption of their cellular data usage on their iPhones.

79. Plaintiff and the Class are entitled to and do seek all monetary and non-monetary relief allowed by law for Apple’s violation of the CDAFA, including damages, punitive

1 damages, an order enjoining Apple's unlawful acts and practices, and attorneys' fees and costs.

2 **Fourth Claim for Relief**
 3 **Trespass to Chattels**
On Behalf of Plaintiff and the Class

4 80. Plaintiffs incorporate the above allegations as if fully set forth herein.

5 81. Apple, intentionally and without consent or other legal justification, introduced
 6 Consuming Code onto Plaintiff and Class members' iPhones that interfered with their use of
 7 their property.

8 82. Apple, intentionally and without consent or other legal justification, introduced
 9 Consuming Code onto Plaintiff and Class members' iPhones that made their iPhones
 10 surreptitiously consumer cellular data, which caused Plaintiff and Class members to incur
 11 cellular data charges, suffer from reduced iPhone data speeds, and lose the use of cellular data
 12 they purchased.

13 83. Apple's intentional and unjustified introduction of the Consuming Code interferes
 14 with Plaintiff and the Class members' use of their iPhones. Alternatively, Apple's conduct
 15 damaged the affected iPhones by causing them to perform more poorly than they would have
 16 absent the Consuming Code.

17 84. Plaintiff and the Class members were harmed by Apple's conduct and Apple's
 18 conduct was a substantial factor in causing such harm.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, on his own behalf and on the behalf of the Class, prays for
 21 judgment against Defendants:

22 A. Certifying the proposed Class;

23 B. Appointing Plaintiff as representative of the Class;

C. Appointing the undersigned counsel as counsel for the Class;

D. Awarding Plaintiff and the Class all damages allowed by law and/or equity (but not damages under the CLRA), including statutory, restitutionary, and punitive damages, and both pre- and post-judgment interest on any amounts awarded;

E. Awarding Plaintiff and the Class's attorneys' fees and costs, as allowed by law and/or equity;

F. Enjoining Apple from continuing the unfair, unlawful, and deceptive business practices alleged in this Complaint;

G. Granting Plaintiff leave to conform this Class Action Complaint to the evidence produced at trial; and

H. Granting such other and further relief as the Court deems necessary, just, and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED this 24th day of October, 2020.

TOUSLEY BRAIN STEPHENS PLLC

By: /s/ Jason T. Dennett

Kim D. Stephens
Jason T. Dennett
Kaleigh N. Powell
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
Telephone: 206.682.5600
Fax: 206.682.2992
Email: kstephens@tousley.com
Email: jdennett@tousley.com
Email: kpowell@tousley.com

GIBBS LAW GROUP LLP

By: /s/ David M. Berger

Eric H. Gibbs
David M. Berger
Alexander J. Bukac
505 14th Street, Suite 1110
Oakland, California 94612
Telephone:(510) 350-9700
Fax: (510) 350-9701
ehg@classlawgroup.com
dmb@classlawgroup.com
ajb@classlawgroup.com

Attorneys for Plaintiff and the Putative Class

ATTESTATION

I, David M. Berger, am the ECF User whose ID and password are being used to file the foregoing document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that the above signatories have concurred in this filing.

By: /s/ David M. Berger